

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBEKAH FOUQUET,

Defendant.

Case No.: 2-12-CR-453-APG-GWF

**ORDER DENYING SENTENCE
REDUCTION**

Defendant Rebekah Fouquet seeks a reduction of her sentence pursuant to 18 U.S.C. § 3582(c)(2). (Dkt. #180.) On October 17, 2013, I sentenced Fouquet to 57 months of incarceration. Subsequently, the United States Sentencing Commission adopted a two-level reduction in the Sentencing Guidelines' drug offense levels. Fouquet seeks a reduction of her sentence consistent with that reduction.

Fouquet's 57-month sentence was based in part upon the calculations set forth in the Probation Office's Presentence Investigation Report ("PSR"). I agreed with the Probation Office's determination that Fouquet was responsible for 3,391.4 grams of MDMA. Although this drug quantity corresponded to a base offense level of 32 in the 2012 Drug Quantity Table, Fouquet's offense level was reduced to 30 pursuant to U.S.S.G. §§ 2D1.1 (a)(5)(i). That provision directs courts to apply "[t]he offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is . . . level 32, decrease by 2 levels." Because Fouquet qualified for a mitigating role adjustment, and because the offense level specified in the Drug Quantity Table was 32, her base offense level was 30. The resulting guideline range was 57-71 months' imprisonment. I sentenced Fouquet to the low-end of that range: 57 months.

1 As set forth above, Fouquet's base offense level of 32 was reduced to 30 based upon U.S.S.G.
2 § 2D1.1 (a)(5). That provision applies only where a) the defendant qualifies for a mitigating role
3 adjustment, and b) the base offense level listed in the Drug Quantity Table is 32 or higher. Under the
4 new drug offense levels, Fouquet's base offense level is 30 pursuant to the drug quantity table.
5 Because U.S.S.G. §§ 2D1.1 (a)(5) does not apply where the offense level in the drug quantity table is
6 lower than 32, Fouquet's base offense level remains 30, *i.e.*, the same base offense level she was
7 assigned at her sentencing. Thus, she is not entitled to a sentence reduction.

8 This is consistent with holdings in other circuits. *United States v. Brown*, 404 Fed. Appx. 460,
9 461 (11th Cir. 2010) (unpublished); *accord United States v. Teron*, 371 Fed. Appx 235, 236-37 (2d Cir.
10 2010) (per curiam) (unpublished); *United States v. Owens*, 330 Fed. Appx 756, 758-59 (10th Cir. 2009)
11 (unpublished).

12 Because Defendant's "amended" guideline range would be identical to the guideline range
13 under which she was sentenced, Fouquet was not sentenced "based on a sentencing range that has
14 subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c). Fouquet is therefore
15 statutorily ineligible for a sentence reduction, and I lack authority to grant her motion.

16 IT IS THEREFORE ORDERED that Fouquet's motion for a reduction of her sentence is
17 DENIED.

18 **DATED** this 29th day of April, 2015.

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22 Andrew P. Gordon
23 United States District Judge
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